

United States District Court		District
Name <u>Teobert A. Johnson</u>	Prisoner No. <u>05-G-0122</u>	Case No. <u>08 CV 0522</u>
Place of Confinement <u>Bedford Hills Correctional Facility, 247 HARRIS ROAD, Bedford Hills, New York 10507</u>		
Name of Petitioner (include name under which convicted) <u>Teobert A. Johnson</u>	Name of Respondent (authorized person having custody of petitioner) <u>V. Superintendent A. Perez</u>	
The Attorney General of the State of:		

**PETITION**

- Name and location of court which entered the judgment of conviction under attack \_\_\_\_\_
- Date of judgment of conviction \_\_\_\_\_
- Length of sentence 17 1/2 years with 5 years
- Nature of offense involved (all counts)  
Attempted Murder 2nd degree - 160-125.25

5. What was your plea? (Check one)

(a) Not guilty ☒

(b) Guilty ☐

(c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury ☒

(b) Judge only ☐

7. Did you testify at the trial?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

(SEE exhibit C)

9. If your answer to 8. was "yes," attach a copy of the appeals court decision to this petition and answer the following:

(a) Name of court (e.g., NYS Sup. Court, 4th Dept.) Appellate Division, 4th Dept.

(b) Result Aggrieved

(c) Date of result and citation, if known MARCH 16, 2007

(d) List all grounds you raised (1) Appellant was denied her federal and state constitutional rights to due process and equal protection (U.S. Const. Amend 14, N.Y. Const. Article 1 § 6 and 11) by the people's discriminatory exercise of a preemptory challenge

(2) (See exhibit A)

(3) \_\_\_\_\_

(4) \_\_\_\_\_

10. Did you seek further review of the appeals court decision by a higher state court (e.g., the NYCourt of Appeals)?

Yes ☒ No ☐

(petitioner has lost this record)

11. If your answer to 10. was "yes," attach a copy of the higher state court decision to this petition and answer the following:

(a) Name of court Court of appeals

(b) Result denied

(c) Date of result and citation, if known approximately July 17, 2007

(d) List all grounds you raised (1) \_\_\_\_\_

(2) See Exhibit D

(3) \_\_\_\_\_

(4) \_\_\_\_\_

12. Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☒

13. If your answer to 12. was "yes," attach a copy of the United States Supreme Court decision to this petition and please answer the following with respect to each direct appeal you asked the United States Supreme Court to review:

(a) Result \_\_\_\_\_

(b) Date of result and citation, if known \_\_\_\_\_

(c) List all grounds you raised (1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(4) \_\_\_\_\_

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g. a petition under NY CPL § 440, a state habeas petition, or a previous petition under 28 U.S.C. 2254) with respect to this judgment in any court, state or federal?

Yes ☐ No ☒

15. If your answer to 14. was "yes," attach a copy of that court's decision to this petition and give the following information:

(a) Name of court \_\_\_\_\_

(b) Nature of proceeding \_\_\_\_\_

(c) Date Filed \_\_\_\_\_

(d) List all grounds you raised (1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(4) \_\_\_\_\_

- (e) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes ☐ No ☐



(f) Result \_\_\_\_\_

(g) Date of result \_\_\_\_\_

16. If your answer to 14. was "yes" and you also filed a second petition, application, or motion, attach a copy of that court's decision to this petition and give the same information:

(a) Name of court \_\_\_\_\_

(b) Nature of proceeding \_\_\_\_\_

(c) Date Filed \_\_\_\_\_

(d) List all grounds you raised (1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(4) \_\_\_\_\_

(e) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes ☐ No ☐

(f) Result \_\_\_\_\_

(g) Date of result \_\_\_\_\_

As to any third, fourth, etc. petition, application, or motion, attach a copy of that court's decision to this petition and give the same information asked for under 15. and 16.

17. If your answer to 14. was "yes" and if the court did not grant the petition(s), application(s), or motion(s) you listed under 15. and 16., did you appeal to an intermediate court of appeals (e.g., the New York State Court of Appeals or the Second Circuit Court of Appeals)?

Yes ☐ No ☐

18. If your answer to 17. was "yes," attach a copy of the appeals court decision to this petition and answer the following regarding each petition, application, or motion:

(a) Name of court \_\_\_\_\_

(b) Date Filed \_\_\_\_\_

(c) Result \_\_\_\_\_

(d) Date of result and citation, if known \_\_\_\_\_

(e) List all grounds you raised (1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(4) \_\_\_\_\_

19. Did you appeal to the highest state court (e.g., the NYS Court of Appeals) or the United States Supreme Court for review of decisions regarding the petition(s), application(s), or motion(s) you listed in 15. and 16.?

(a) First petition Yes ☐ No ☐

(b) Second petition Yes ☐ No ☐

(c) Third petition Yes ☐ No ☐

[List any other petition and indicate yes or no.]

20. For each "yes" answer in 19., attach a copy of that court's decision to this petition and give the following information:

(a) Name of court \_\_\_\_\_

(b) Date filed \_\_\_\_\_

(c) Result \_\_\_\_\_

(d) Date of result and citation, if known \_\_\_\_\_

(e) List all grounds you raised (1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

(4) \_\_\_\_\_

21. If you did not appeal from the adverse action on any petition, application, or motion, explain briefly why you did not:

22. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. See 28 U.S.C. §2254(b). If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date. See 28 U.S.C. §2244(b).

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

- A. Ground one: Appellant was denied her federal and state constitutional rights to DUE PROCESS and EQUAL PROTECTION (U.S. Const. Amend. 14; N.Y. Const. ARTICLE I, §§ 6 and 11) by the people's discriminatory exercise of a peremptory challenge and the court's improper denial of Appellant's Batson motion based on LEGAL standard.

Supporting FACTS (state briefly without citing cases or law):

(See Exhibit A)



- Petitioner was prejudiced when the trial transcripts  
 B. Ground two: Read back exceeded the jury's Request. The judge, notion for mistrial should have been granted.

Supporting FACTS (state briefly without citing cases or law):

(See Exhibit A)

- C. Ground three: The evidence was insufficient to sustain petitioner's convictions in violation of federal and state constitutional rights, alternatively, the verdict is against the weight of the evidence.

Supporting FACTS (state briefly without citing cases or law):

(SEE Exhibit A)

- D. Ground four: The court improperly denied petitioner's Request that alternative sentencing under PL 960.12 be considered

Supporting FACTS (state briefly without citing cases or law):

(SEE Exhibit A)

23. If you did not previously present any of the grounds listed in 22A, 22B, 22C, and 22D in any other court, state or federal, state briefly what grounds you did not present and give your reasons for not presenting them:

E. Ground five: The court improperly denied petitioner's objection to the jury charge regarding motive.  
Supporting FACTS (state briefly without citing cases or law):

(See Exhibit A)

f. Ground six: Ineffective Assistance of Counsel

(See Exhibit E)



24. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☒ No ☐

(a) Name of court \_\_\_\_\_

(b) Nature of proceeding 440.10 motion

(c) Date filed CPL 440.10 to be submitted before us about October 2008 \* SEE BELOW

(d) List all grounds you raised (1) Ineffective Assistance of Trial Counsel

(2) \_\_\_\_\_

(3) (See exhibit E)

(4) \_\_\_\_\_

(5) \_\_\_\_\_

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you challenge in this petition:

(a) At preliminary hearing Alan D. Goldstein, 42 Delaware Avenue, Suite 525, Buffalo, N.Y. 14202

(b) At arraignment and plea Alan D. Goldstein "

(c) At trial Alan D. Goldstein "

(d) At sentencing Alan D. Goldstein "

(e) On appeal Paul B. Curtin, The Legal Aid Bureau of Buffalo, INC. 237 Main Street - Suite 1602, Buffalo, New York 14203-2778

(f) In any post-conviction proceeding pro se

(g) On appeal from any adverse ruling in a post-conviction proceeding \_\_\_\_\_

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☐ No ☒

\* DRAFT Document Attached; Petitioner is currently obtaining evidentiary Affidavits, which when obtained, the CPL 99.440.10 will be submitted.

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

7-10-08

(Date)

J. Johnson

Signature of Petitioner